

APPEAL NO. 030460  
FILED MARCH 28, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 22, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter. The claimant appealed and the respondent (carrier) responded, urging affirmance.

DECISION

Reversed and rendered.

The claimant appeals the hearing officer's determination that she was not entitled to SIBs for the sixth quarter because she failed to seek employment commensurate with her ability to work and because she was not satisfactorily participating in a full-time rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period for the sixth quarter. There was conflicting evidence concerning the claimant's job search during the qualifying period and we cannot say that the hearing officer erred as a matter of law in finding that the claimant did not seek employment commensurate with her ability to work. However, the hearing officer erred as matter of law in finding that the claimant did not satisfactorily participate in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period.

As stipulated by the parties, the qualifying period for the sixth quarter was from April 30 through July 29, 2002. The claimant submitted into evidence a TRC Vocational Rehabilitation Services Individualized Plan for Employment (IPE) dated July 18, 2002. According to the IPE, the claimant and the TRC agreed that she would enroll in a cosmetology program leading to a career as a cosmetologist. The claimant submitted evidence that she commenced her coursework on August 5, 2002, as scheduled and has continued to be satisfactorily enrolled in the program through the date of the hearing. The claimant testified that she began attending classes on August 5, 2002, pursuant to the IPE, and that prior to commencing her classes, she met with an instructor at the school and purchased the necessary supplies. The carrier did not dispute any of this evidence.

The hearing officer found that the claimant was not satisfactorily participating in the TRC program during the qualifying period. It is apparent from the hearing officer's Statement of the Evidence that she believed that the claimant was not satisfactorily participating in the TRC program during the qualifying period because the claimant did not begin to attend classes during the qualifying period. This is not the correct legal standard. Whether the claimant was satisfactorily participating in the TRC retraining program hinged on whether she was performing the requirements set out by the TRC in the IPE. The claimant enrolled in the classes during the qualifying period. The mere fact that the classes did not begin until after the end of the qualifying period was a

function of the school's schedule and not of the claimant's failure to satisfactorily participate in the TRC program. The claimant began attending classes when classes began after her enrollment. Clearly, during the qualifying period the claimant was participating in the TRC training program. See Texas Workers' Compensation Commission Appeal No. 010483-s, decided April 20, 2001; Texas Workers' Compensation Appeal No. 023229, decided February 4, 2003. We reverse the determination of the hearing officer that the claimant was not satisfactorily participating in the TRC program during the qualifying period and render a decision that the claimant was satisfactorily participating. Based upon the claimant's satisfactory participation in a full-time TRC-sponsored vocational rehabilitation program during the qualifying period, we reverse the hearing officer's decision that the claimant was not entitled to SIBs for the sixth quarter and render a decision that the claimant was entitled to SIBs for this period. We order the carrier to pay these benefits along with interest on any unpaid, accrued benefits.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge